

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: : Case No.: 16-21390-GLT  
Bernard J Wetzel : Chapter: 13  
Cheryl A Wetzel :  
Debtor(s). : Date: 8/9/2017  
Time: 10:30

**FILED**

AUG 10 2017

CLERK, U.S. BANKRUPTCY COURT  
WEST DIST. OF PENNSYLVANIA

**PROCEEDING MEMO**

**MATTER:** #104 - Motion filed by Brzustowicz & Marotta, P.C. for: (i) Payment of Attorneys' Fees Held by Ch 13 Trustee Pursuant to Ch 13 Plan; and (ii) Transfer Balance of Funds from the Ch 13 Trustee to Ch 7 Trustee  
#113 - Brief/Memorandum filed by Debtor  
#118 - Response by Chapter 13 Trustee

**APPEARANCES:**

Debtor: John C. Brzustowicz  
Trustee: Ronda J. Winnecour

**NOTES:**

Brzustowicz: SCOTUS is not infallible. Look at *Korematsu*.

Court: You're asking me to contradict a unanimous decision from two years ago. A district court contradicted *Korematsu* after 40 years.

Brzustowicz: I don't think SCOTUS considered the constitutional issues their case raises. No one has argued constitutional grounds.

Court: Have you discussed payment with your clients? Would they consent to an order authorizing payment from the trustee?

Brzustowicz: Cheryl died a month ago. Bernard is comfortable with it. Bernard said if he gets the money back, he's just going to cut me a check.

Court: But would he consent to an order directing the trustee to pay \$2,074 to you and the balance to him?

Brzustowicz: Yes. However, it doesn't make sense that I cannot be paid under § 349 but I can under § 348. That creates a conflict of interest for an attorney by encouraging him to advise clients to get out of ch. 13 and into ch. 7. That would be an uncompensated government taking because it would force me to do the work in violation of the Thirteenth Amendment. It also shows unequal and disparate treatment in violation of the Fifth and Fourteenth Amendments.

Court: So you intend to obtain a proposed order with trustee's and the Debtor's consent?

Brzustowicz: Yes.

**OUTCOME:**

1. Brzustowicz shall file a Certificate of Counsel and proposed Order within two weeks. (Text Order to issue.)

**DATED:** 8/9/2017